

# CONDOMINIUM PUBLIC REPORT

**Prepared &**

Issued by: Developer HEDSCH, INC.  
Address P. O. Box 3551, Lihue, Kauai, Hawaii 96766

**Project Name(\*):** AHUPUA'A VILLAGE  
**Address:** Kapaa Homesteads, Fourth Series, Kapaa, Kauai, Hawaii

Registration No. 3321

**Effective date:** June 30, 1995

**Expiration date:** July 30, 1996

### Preparation of this Report:

**This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.**

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

**Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.**

**Expiration Date of Reports.** Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

**Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.**

**Type of Report:**

**PRELIMINARY:** The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

<u>X</u>	<b>FINAL:</b> (white)	The developer has legally created a condominium and has filed complete information with the Commission.
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**[X ] No prior reports have been issued.**

☐ This report supersedes all prior public reports.

[ ] This report must be read together with \_\_\_\_\_

— SUPPLEMENTARY: This report updates information contained in the:  
(pink) [ ] Preliminary Public Report dated: \_\_\_\_\_  
[ ] Final Public Report dated: \_\_\_\_\_  
[ ] Supplementary Public Report dated: \_\_\_\_\_

And ☐ Supersedes all prior public reports

☐ Must be read together with \_\_\_\_\_

☐ This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

☒ Required and attached to this report

☐ Not Required - disclosures covered in this report.

as Exhibit E

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

☐ No prior reports have been issued by the developer.

☐ Changes made are as follows:

- \* \* \* \* \*
1. This Public Report does not constitute an approval of the project by the Real Estate Commission, or any other government agency, nor that all County Codes, Ordinances and subdivision requirements have been complied with.
  2. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit as shown on the Condominium Map is designated as a limited common element for that unit and does not represent a legally subdivided lot. The dotted lines on the Condominium Map merely represent the location of the limited common element assigned to each unit.
  3. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, improved access for owners and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways. The County requires a buyer to waive his right to the County to provide water.
  4. UNEQUAL COMMON INTEREST. THE COMMON INTERESTS APPURTENANT TO THE EIGHT UNITS ARE NOT ON AN EQUAL BASIS. SIX OF THE EIGHT UNITS HAVE A 5% INTEREST AND UNIT A HAS A 55% AND UNIT B HAS A 15% INTEREST. THEREFORE, PURCHASERS SHOULD BE AWARE THAT THE OWNER OF UNIT A WHICH HAS AN APPURTENANT 55% INTEREST WILL ALWAYS BE ABLE TO CAST THE MAJORITY VOTE IN THE APARTMENT OWNERS ASSOCIATION MATTERS, UNLESS IT IS FURTHER DIVIDED INTO MULTIPLE UNITS THAT REDUCE UNIT A'S APPURTENANT INTEREST TO 50% OR LOWER.

\* THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY \*

\* REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH \*

\* REGARD TO THE FOREGOING. \*

\* \*

\* \* \* \* \*

B:HED.P2

## TABLE OF CONTENTS

	page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
 I. PERSONS CONNECTED WITH THE PROJECT	 5
Developer                      Attorney for Developer      General Contractor	
Real Estate Broker      Escrow Company      Condominium Managing Agent	
 II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
 III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
 IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
 V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
 EXHIBIT A: Common Elements	
EXHIBIT B: Encumbrances Against Title	
EXHIBIT C: Summary of Sales Contract	
EXHIBIT D: Summary of Escrow Agreement	
EXHIBIT E: Disclosure Statement	
EXHIBIT F: Building and House Rules	
EXHIBIT G: Summary of Declaration of Restrictive Covenants dated June 25, 1986.	
EXHIBIT H:	
EXHIBIT I:	

## General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

**I. PERSONS CONNECTED WITH THE PROJECT**

**Developer:** HEDSCH, INC. **Phone:** (808) 2463526  
**Name** P. O. Box 3551 **(Business)**  
**Business Address**  
Lihue, Kauai, Hawaii 96766

**Names of officers or general partners of developers who are corporations or partnerships:**

Hedda Schmutz President/Treasurer  
Adam Prall Vice President/Secretary  
\_\_\_\_\_  
\_\_\_\_\_

**Real Estate Broker:** Robert H. Middleton, dba Kauai **Phone:** (808) 8229888  
**Name** Isle Real Estate **(Business)**  
441 Papaloa Road  
**Business Address**  
Kapaa, Kauai, Hawaii 96746

**Escrow:** First American Title Co. of **Phone:** (808) 2458877  
**Name** Hawaii, Inc. **(Business)**  
923 Nuuanu Avenue  
**Business Address**  
Honolulu, Hawaii 96813

**General Contractor:** N/A **Phone:** \_\_\_\_\_  
**Name** **(Business)**  
\_\_\_\_\_  
**Business Address**  
\_\_\_\_\_

**Condominium Managing Agent:** Self managed by Association of  
Apartment Owners **Phone:** \_\_\_\_\_  
**Name** **(Business)**  
\_\_\_\_\_  
**Business Address**  
\_\_\_\_\_

**Attorney for Developer:** Hiroshi Sakai, Attorney at  
Law, A Law Corporation **Phone:** (808) 5314171  
**Name** **(Business)**  
201 Merchant Street, Suite 902  
**Business Address**  
Honolulu, Hawaii 96813

## II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. Declaration of Condominium Property Regime contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

☐ Proposed  
☒ Recorded - Bureau of Conveyances: Document No. 95-038881  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☐ Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration and By Laws dated May 26, 1995 as Document No. 95-073716.  
Second Amendment to Declaration dated June 9, 1995 as Document No. 95-082168.

- B. Condominium Map (File Plan) shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

☐ Proposed  
☒ Recorded - Bureau of Conveyances Condo Map No. 2225  
☐ Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

- C. Bylaws of the Association of Apartment Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

☐ Proposed  
☒ Recorded - Bureau of Conveyances: Document No. 95-038882  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☐ Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration and By Laws dated May 26, 1995 as Document No. 95-073716.

- D. House Rules. The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

☐ Proposed                      ☒ Adopted                      ☐ Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	—	<u>Majority vote of Board</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. Developer:

☐ No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

☒ Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

Developer has reserved the right under Paragraph 15.0 of the Declaration to alter the units in the Project which it owns without the approval of the Association or the other apartment owner and to amend the Condominium Map to note changes resulting from the exercise of the Developer's reserved rights under Paragraph 15.0. Developer has also reserved the right under Paragraph 16.0 to record any "as built" statements as required by law.

### III. THE CONDOMINIUM PROJECT

#### A. Interest to be Conveyed to Buyer:

- ☒ Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- ☐ Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:            ☐ Monthly                      ☐ Quarterly  
   ☐ Semi-Annually            ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month    ☐ Year

#### For Subleaseholds:

- ☐ Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
                                 ☐ Canceled        ☐ Foreclosed

- ☐ As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- ☐ Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:            ☐ Monthly                      ☐ Quarterly  
   ☐ Semi-Annually            ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month    ☐ Year

[ ] Other:

### IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

#### **B. Underlying Land:**

Address: Lot 43, Kapaa Homesteads, Fourth Series, Kapaa Tax Map Key: (4) 4-6-039: 027  
Kauai, Hawaii (TMK)

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: 4.869 [ ] square feet [ X ] acre(s) Zoning: Residential  
Not buildable area is "open" zone.

Sublessor: \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

5. **Special Use Restrictions:**

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

[ ] Pets: \_\_\_\_\_

[ ] Number of Occupants: \_\_\_\_\_

[X] Other: See Declaration of Restrictive Covenants for Kapaa Homesteads, a Summary of  
which is attached as Exhibit G and Building and House Rules, Exhibit F.

[ ] There are no special use restrictions.

6. **Interior** (fill in appropriate numbers):

Elevators: -0-      Stairways: -0-      Trash Chutes: -0-

<u>Apt.</u> <u>Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net</u> <u>Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>Shed</u>	<u>7</u>	<u>N/A</u>	<u>16</u>	<u>-0-</u>
<u>Shed</u>	<u>1</u>	<u>N/A</u>	<u>96</u>	<u>-0-</u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

Total Apartments: 8

\*~~Net~~<sup>xxxxx</sup> Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

**Boundaries of Each Apartment:**

The exterior surfaces of the structures and the description of the limited common element for each of the units as set forth in the Condominium Map.

**Permitted Alterations to Apartments:**

Either apartment owner can increase the total square footage of his structure, add additional structures, alter the location of his structure and/or subdivide in accordance with the Declaration, Building and House Rules, building code, zoning and subdivision ordinances.

7. Parking Stalls: \*Open stalls not designated. By ordinance, two (2) parking stalls for each residential apartment is required.  
Total Parking Stalls: \_\_\_\_\_

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	_____	_____	_____	_____	_____	_____	_____

Each apartment will have the exclusive use of at least two \* parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

- ☐ Commercial parking garage permitted in condominium project.  
☐ Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

☒ There are no recreational or common facilities.

☐ Swimming pool                      ☐ Storage Area                      ☐ Recreation Area

☐ Laundry Area                      ☐ Tennis Court                      ☐ Trash Chute

☐ Other: \_\_\_\_\_

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

☒ There are no violations.

☐ Violations will not be cured.

☐ Violations and cost to cure are listed below.    ☐ Violations will be cured by \_\_\_\_\_

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

a. ☒ No variances to zoning code have been granted.

☐ Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  X  </u>	<u>          </u>	<u>          </u>
Structures	<u>  X  </u>	<u>          </u>	<u>          </u>
Lot	<u>  X  </u>	<u>          </u>	<u>          </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

☒ described in Exhibit   A  .

☐ as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

☐ There are no limited common elements in this project.

☒ The limited common elements and the apartments which use them, as described in the Declaration, are:

☐ described in Exhibit \_\_\_\_\_.

☒ as follows:

The land area of each apartment consisting of the land beneath it as shown and delineated on the Condominium Map is a limited common element for the use of the owner of each respective apartment.

Apartment A - 147,728 sq. ft.      NOTE: Land areas referenced herein  
Apartment B - 15,000 sq. ft.      are not legally subdivided lots.  
Apartment C - 5,000 sq. ft.  
Apartment F - 5,000 sq. ft.  
Apartment G - 5,000 sq. ft.  
Apartment H - 5,000 sq. ft.  
Apartment J - 5,000 sq. ft.  
Apartment K - 5,000 sq. ft.

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

☐ described in Exhibit \_\_\_\_\_.

☒ as follows:

Apartment A - 55% appurtenant common interest  
Apartment B - 15% appurtenant common interest  
Apartment C - 5% appurtenant common interest  
Apartment F - 5% appurtenant common interest  
Apartment G - 5% appurtenant common interest  
Apartment H - 5% appurtenant common interest  
Apartment J - 5% appurtenant common interest  
Apartment K - 5% appurtenant common interest

- E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit B describes the encumbrances against the title contained in the title report dated 3/23/95 and issued by First American Title Insurance Company.

**Blanket Liens:**

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

- ☐ There are no blanket liens affecting title to the individual apartments.
- ☒ There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Purchase Money Mortgage dated 12/22/94 recorded as Document No. 94-213212	Buyer's interest may be <u>terminated</u> and Buyer's deposits may be refunded.

**F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements: None

2. Appliances: None

**G. Status of Construction and Estimated Completion Date:**

All 8 apartments - Notice of completion published on February 4 and 11, 1995.

**H. Project Phases:**

The developer [☒] has    [☐] has not    reserved the right to add to, merge, or phase this condominium.

**Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):**

The Developer has reserved the right to subdivide the land in the Project in accordance with the requirements of governmental authorities and is authorized on behalf of the Association and all of the owners to establish subdivided lots which shall follow the boundary lines in whole or in part of established units in the project. Upon establishment of lots within the project, the Declarant is authorized and does have the further authority to create additional condominium units which will then have the capability of establishing Additional Dwelling Units.

#### IV. CONDOMINIUM MANAGEMENT

- A. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

☐ not affiliated with the Developer ☐ the Developer or the Developer's affiliate.  
☒ self-managed by the Association of Apartment Owners ☐ other \_\_\_\_\_

B. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit E contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. Utility Charges for Apartments:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

☒ None ☐ Electricity ☐ Gas ☐ Water  
☐ Sewer ☐ Television Cable ☐ Other \_\_\_\_\_

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

☐ Notice to Owner Occupants

☒ Specimen Sales Contract  
Exhibit C contains a summary of the pertinent provisions of the sales contract.

☒ Escrow Agreement dated 3/9/95  
Exhibit D contains a summary of the pertinent provisions of the escrow agreement.

☒ Other Building and House Rules

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

A) The Developer delivers to the buyer a copy of:

1) Either the Final Public Report OR the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;

AND

2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); AND

C) One of the following has occurred:

1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or

2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or

3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND

B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime., as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules.
  - E) Condominium Map.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other Declaration of Restrictive Covenants dated 6/25/86

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 3321 filed with the Real Estate Commission on April 10, 1995

Reproduction of Report. When reproduced, this report must be on:

☐ yellow paper stock                      ☒ white paper stock                      ☐ pink paper stock

**C. Additional Information Not Covered Above**

1. The purchase money mortgage dated December 22, 1995 recorded as Document No. 94-213212 provides in part as follows:

a. The Mortgagee approves the subdivision and/or submission to a condominium property regime of the property under paragraph 26.

b. Provision is made for partial release of units under paragraph 27.

2. The Waiver and Release dated January 17, 1995 executed by HEDSCH, INC. as an Applicant for building permit for the storage shed which was recorded as Document No. 95-00879 in the Bureau of Conveyances, State of Hawaii is summarized as follows:

a. The issuance of the building permit will not be construed by the Applicant, its successors, and assigns ("Applicant") to infer, warrant or guarantee that water or water services by the County will be provided to the property at any time in the future.

b. Applicant will not use the issuance of the building permit as a basis for any claim, action, suit or demand of any kind for the providing of water or water services by the County of Kauai, at this time or any time in the future.

c. Applicant waives any right to institute any claim, action, suit or demand of any kind which could or will arise out of the absence of County-supplied water or water services.

d. Applicant will give notice to any one acquiring title to the subject property the entire contents of the Waiver and Release by having them affix their signature(s) upon a document attesting to such notice and will provide to the Building Division a copy of such properly executed document upon execution; and

5. Applicant will indemnify and hold harmless the County of Kauai by and for the Department of Water and Board of Water Supply from any claim, action, suit or demand that is brought by my agent, successor in interest or assigns for my failure to comply with any provision of this Waiver and Release.

- D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

HEDSCH, INC.

Name of Developer

By: 

Duly Authorized Signatory

3/22/95  
Date

Hedda Schmutz, President

print name & title of person signing above

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration

EXHIBIT "A"

Common Elements

The common elements which the apartments have immediate access to include:

- a. The land in fee simple.
- b. The common element road including utility access.
- c. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities.
- d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

EXHIBIT "B"

Encumbrances Against Title

The title report of First American Title Insurance Company reports that title to the land is subject to the following encumbrances:

1. The first installment of taxes for the fiscal year 1994-1995 have been paid for in full. For confirmation regarding real property taxes due and owing for subsequent installment contact the office of the County of Kauai Director of Finance.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Exception and reservation therefrom the right to the present public road and existing trail, until such time said public road and trail are abandoned; as contained in Land Patent Grant Number 10,796, to the extent, if any, said public road and/or trail affects said lot.

4. Right of entry to Citizens Utilities Company dated October 17, 1985, recorded in Liber 19076, Page 339 for purpose of building, constructing, and operating pole and wire lines and/or underground lines, etc. for the transmission and distribution of electricity, etc.

5. Designation of Easement "2" (10 feet wide) for access and utility purposes shown on Survey Map prepared by Dennis H. Esaki, approved on April 9, 1986.

6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Declaration dated June 25, 1986, recorded in said Bureau in Liber 19663, page 157. Said Declaration was annexed by instrument dated March 18, 1987, recorded in Liber 20481 at Page 218.

7. Grant to Citizens Utilities Company and GTE Hawaiian Telephone Company Incorporated dated June 8, 1990 recorded as Document No. 90-137448 in said Bureau granting a perpetual right and easement to build, construct, etc. pole and wire lines and/or underground lines for the transmission and distribution of electricity.

8. Purchase Money Mortgage dated December 22, 1994 from Hedsch, Inc., as Mortgagor, to Hugh Edward Riley and Lillian R. Riley, as Trustees of the Riley Family Revocable Living Trust, under unrecorded Trust Agreement dated June 19, 1992 filed as Document No. 94-213212 to secure the sum of \$275,000.00.

9. Terms and provisions of that certain Waiver and Release dated January 17, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-008791, to which reference is hereby made.

10. Terms and provisions of that certain Easement Agreement made between HEDSCH, INC., a Hawaii corporation, and Hugh Edward Riley and Lillian R. Riley, as Trustees of the unrecorded Riley Family Revocable Living Trust dated June 19, 1992, dated December 20, 1994, recorded in said Bureau as Document No. 95-013777, to which reference is hereby made.

11. Condominium Map No. 2225 filed in said Bureau.

12. Restrictions, covenants, agreements, obligations, conditions, easements and other provisions set forth in Declaration of Condominium Property Regime Ahupua'a Village Condominium dated March 8, 1995, recorded in said Bureau as Document No. 95-038881.

13. Restrictions, covenants, agreement, obligations, conditions and other provisions set forth in the By Laws of the Association of Apartment Owners of Ahupua'a Village Condominium dated March 8, 1995 recorded in said Bureau as Document No. 95-95-038222.

14. Any invalidity of the Condominium Property Regime described herein by reason of the fact that the Mortgagee of the Mortgage referred to as Item No. 8 above did not join in or consent to the Condominium Property Regime.

Note: See paragraph 26 of aforesaid Purchase Money Mortgage which approves the submission to a condominium property regime and paragraph 27 which provides for the amount of payment necessary for partial release of units.

15. All exclusive and non-exclusive easements mentioned in said Declaration, and/or as shown on Condominium Map No. 2225.

## EXHIBIT "C"

### Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. An application for a mortgage loan within 10 days after notification by Seller and if approval is not concluded within 30 days after submission of the application then Seller has the option to terminate the contract. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the Seller unless Buyer arranges with Escrow to establish a separate savings account and to pay \$25.00 to Escrow for the establishment and maintenance of such account, then such interest shall accrue to the benefit of the Buyer.

(d) That the unit will be subject to various legal documents, including Declaration, By Laws, Final Public Report including Encumbrances and Disclosure Statement attached thereto, Building/House Rules, Escrow agreement, Apartment Deed, Certificate of Architect and Condominium Map and any other documents which the buyer is given a copy of and for which he has receipted for the same.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(f) If Buyer defaults, Seller shall give written notice to Buyer by certified mail and if such default is not cured within 10 days after receipt of notice, Seller may terminate the Sales Contract and retain the Buyer's deposits as liquidated damages. Seller may in addition pursue any other remedy including specific performance and all costs by reason of such default shall be borne by Buyer.

(g) If Buyer has paid all payments required under the Sales Contract, Buyer shall be entitled to specific performance.

(h) Buyer must preclose by signing all documents and paying all amounts due for closing to escrow when instructed to do so, or will be deemed in default.

(i) If Buyer dies before closing, Seller may cancel.

(j) Seller reserves the right to create additional condominium units and to subdivide the property.

(k) Unit A has total control of the project if it retains the 55% interest it originally holds and may thus control the Acts of the Association of Apartment Owners.

(l) If Buyer assigns his interest, the assignee must pay 1/4 of 1% of the sales price to the Seller to cover certain costs.

(m) Each unit must pay for its hook up to water, electricity, telephone and provide its own septic tank.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

Note: The Seller has executed a Waiver and Release a summary of which is contained on page 20 of the Final Public Report which states that there is no guarantee that water and water services is available to a Buyer. A person contemplating the securing of a building permit for a dwelling should make application to the Department of Water of the County of Kauai where a determination whether water is available and the charges for a water meter and water services will be made before the issuance of any such water meter and water services. The Buyer is cautioned to make such inquiry before making a commitment to buy a unit if the Buyer is contemplating the building of a dwelling in the future.

## EXHIBIT "D"

### Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

(a) Developer will let purchasers know when payments are due.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement states the following conditions under which a refund will be made to a purchaser. Developer and Purchaser make a written request to Escrow: (a) To return to purchaser the funds; (b) To notify Developer's exercise of any option to rescind the sales contract or (c) That the conditions provided for a refund under Sections 514A-62 or 514A-63 of the Condominium Act have been met.

(d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract, that is, the Purchaser's funds shall be retained by the Seller as liquidated damages.

(e) Escrow shall make no disbursements of purchaser's funds or proceeds on the sale of such apartments (including any payments made on loan commitments from Permanent Lenders), except by way of refunds thereof as provided hereinbelow, until: (i) Escrow receives a copy of a "Receipt for Public Report(s) and Notice of Right to Cancel, in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; (ii) Escrow has received a certification from Developer, acceptable to Escrow, stating that the Sales Contract has become effective and requirements of Section 514A-39 and 514A-63 have been met as those quoted phrases are used in Section 514A-65 of the Condominium Act; and (iii) until the purchaser's apartment deed is filed in the Bureau of Conveyances of the State of Hawaii.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

Note: Section 514A-63, Hawaii Revised Statutes provides for Rescission Rights to a purchaser under a binding contract if there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

EXHIBIT "E"

**AHUPUA'A VILLAGE  
REGISTRATION NO. 3321  
DISCLOSURE STATEMENT AS OF June 14, 1995.**


1. Name of Project: AHUPUA'A VILLAGE
2. Address: Kapaa Homesteads, Fourth Series, Kapaa, Kauai, Hawaii 96746
3. Name of Developer: HEDSCH, INC.
4. Address of Developer: P. O. Box 3551, Lihue, Kauai, Hawaii 96766
5. Telephone Number: (808) 2463526
6. Project Manager or Agent: Self managed by the Association of Apartment Owners.
7. Address: P. O. Box 3551, Lihue, Kauai, Hawaii 96766
8. Maintenance Fees: The fees are as set forth in Exhibit "A" attached hereto and incorporated herein by reference. The maintenance fees provide for liability insurance on the common element roadway. The common element roadway to be improved by the Developer at its own cost at such time that a subdivision is approved by the County of Kauai. Any utility lines and services shall be at the individual cost of each apartment owner. Once the common element roadway is improved the on going maintenance of such roadway shall be the responsibility of the Association until such time as the common element roadway is conveyed (dedicated) to the County of Kauai. Each apartment owner to take out his or her own fire, casualty and liability insurance for their respective apartment and their appurtenant limited common element and shall add the name of the Association as an additional assured.
9. Commencement of Maintenance Fees: At such time that the first unit owner commences to pay maintenance fees then all unit owners including the Developer shall pay maintenance fees.
10. Warranties: The Project is a fee simple condominium project and there are no warranties.
11. Project: The Project consists of 8 condominium apartments the land areas of which are to be utilized for residential and other uses permitted under the zoning ordinances for the County of Kauai. Additional units may be added upon further subdivision by the Developer.

12. The Developer reserves the right to subdivide the condominium property regime and to create as many additional units that the County permits or is not cost prohibitive.
13. Developer retains the right to subdivide any unsold limited common elements appurtenant to any and all units, including Units A and B and to reallocate the percentage interest in common elements and common expenses.
14. There is no pending subdivision application with the County of Kauai.

DATED: Lihue, Kauai, Hawaii, June 14, 1995.

HEDSCH, INC.

BY

  
Hedda Schmutz  
Its President

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EXHIBIT "1"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>	
Apartment A	\$91.66	\$1,099.92
Apartment B	25.00	300.00
Apartment C	8.33	99.96
Apartment F	8.33	99.96
Apartment G	8.33	99.96
Apartment H	8.33	99.96
Apartment J	8.33	99.96
Apartment K	8.33	99.96
Totals	\$166.64	\$1,999.68

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The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning

Electricity

☐ common elements only

☐ common elements and apartments

Elevator

Gas

Refuse Collection

Telephone

Water and Sewer

Maintenance, Repairs and Supplies

Building

Grounds

Management

Management Fee

Payroll and Payroll Taxes

Office Expenses

Insurance	\$91.66	\$1,100.00
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Reserves(\*)

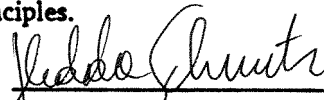
Taxes and Government Assessments

Audit Fees

Other	75.00	900.00
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TOTAL	\$166.66	\$2,000.00
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I, HEDSCH, INC., ~~as agent and employed by~~ the condominium managing agent  
~~or~~ the developer, for the condominium project does, hereby certify that the  
above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in  
accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
President of HEDSCH, INC.

(\*) Mandatory reserves in effect January 1, 1993

Date: June 9, 1995

## EXHIBIT "F"

### **BUILDING AND HOUSE RULES AHUPUA'A VILLAGE**

The purpose of these Building and House Rules ("Rules") is to provide for the design review, development standards, environmental matters, notice of completion of improvements and the use and enjoyment to protect all owners and occupants in having the building and construction of units follow certain development standards and improvements and to reduce the annoyance and nuisance caused by improper conduct and improper use of the condominium, hereinafter referred to as "Project", and to provide for the maximum enjoyment of the premises. All owners and occupants, their agents, employees and invitees shall be bound by the Rules and standards of reasonable conduct whether covered by these Rules or not.

#### **1. Definitions.** As used herein:

a. The "Area" refers to the land set aside for the use of each owner as a limited common element.

b. The "Apartment" refers to the existing building built on the land designated as the limited common element for the owner and any subsequent improvements built within the Area.

c. The "Consultant" refers to an architect or engineer that is designated to review plans and proposals for construction of structures within the Project.

#### **2. Design Review.**

a. The Declarant shall act as or select a Consultant to review plans and proposals for construction of structures within the Area of an Apartment. The Consultant may charge a reasonable fee for the purpose of review and comments and to determine whether there is compliance with the requirements of this Project.

b. Anyone desiring to build a structure within their Area shall submit plans and drawings. The plans and drawings should meet the requirements of a Condominium Map. The plan should show a site plan indicating where the dwelling and improvements will be located in the unit's limited common element land area. There should be a floor plan indicating the living/dining room, bedrooms, kitchen, bathrooms, lanai, etc. and the total net living area. The plan should show the elevations of the dwelling or improvement. The project's name, Tax Map Key, and the architect's or engineer's stamp should be stamped on the plans.

c. In passing upon such plans and specifications the Consultant shall take into consideration: the size, configuration, location and natural features of the Apartment and Area in question, the location of the proposed improvements

within the Area and the effect it will have on other existing or planned improvements of other units in the Project. The Consultant shall use reasonable judgment in passing upon all such plans and specifications and may, if necessary consult with the Declarant for the purpose of determining whether plans and specifications should be denied, approved or approved with modifications, but shall not be liable to any person for its actions in connection with the submitted plans and specifications unless it can be shown that the Consultant acted with the actual intent to commit a wrongful act.

d. Any owner desiring to make an addition to the existing buildings and/or construct any new building will have to comply with the building and zoning ordinances as the same may be changed from time to time. The requirements of the Declaration of Condominium Property Regime, By Laws and these House Rules have to be observed in the addition or construction of any improvements.

e. The architect or engineer's certificate should be executed reflecting the submission to the County of Kauai reflecting the "as built" condition of the improvements.

### 3. Development Standards

a. Every structure shall observe a 5 foot setback from the boundary line of the Area of an Apartment.

b. If an owner desires to have a fence located at the perimeter boundary, it may be of local rocks or plants that are trimmed and maintained as a hedge as is approved by the Consultant.

c. In any grading and/or excavation of the limited common element land Area the grade of the Land Area shall not be altered in such a manner as to affect the drainage of any adjoining Apartment Unit.

d. The water, electricity and telephone lines will be drawn from Easement 2 to each Apartment at their own cost and expense. If any water, electricity and telephone lines are located within the first apartment's limited common element land area and services a second apartment, the second apartment shall have a permanent easement in its favor over the first apartment's limited common element land area. Provided however that the maintenance of such lines will be the responsibility of the second apartment for whose benefit such lines exist.

### 4. Environmental Matters

a. No noxious or offensive activity shall be carried out on any unit, nor shall anything be done or placed on any unit

which is or may become an environmental hazard, including synthetic chemical pesticides, herbicides, or other toxic chemical substances.

b. Any planting or vegetation which cannot be effectively limited from encroaching upon or infesting neighboring property shall be deemed a noxious activity and each owner shall take positive steps to eliminate such vegetation or planting from his unit.

c. No unsightly structure or condition which may substantially diminish the value or quiet enjoyment of each unit shall be caused or permitted on any unit without the approval of the Declarant.

d. No sound shall be permitted to emit or emanate from any unit which is unreasonably loud or annoying or which violate any applicable governmental rule, law or ordinance.

4. Notice of Completions After completion of any improvements, the owner shall proceed to do the following:

a. Publish a Notice of Completion in a newspaper of general circulation in the State of Hawaii for two (2) consecutive weeks at least seven (7) days apart and have it filed with the Clerk of the Fifth Circuit Court.

b. The owner should have prepared at his own cost an amendment to the Declaration reflecting the change in description of the apartment and an amendment to the Condominium Map.

c. The amendment to the Declaration should then be filed for record in the Office of the Registrar of Conveyances, State of Hawaii.

#### 5. Use and Restrictions

a. The residential and other restrictions for the use of the Apartment Unit as well as the Area will have to be observed for any securing of building permits.

b. Each unit shall place his own garbage, trash and rubbish in covered receptacles or in plastic or fastened bags. Each owner shall exercise reasonable care to avoid exposure of waste materials to flies, roaches, rodents and other insects or materials.

c. All refuse collected for this Project will be located at the western end of Easement 2 and there is no assurance that refuse collection will be at each Area.

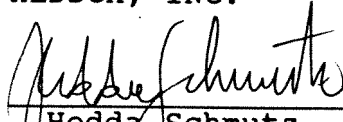
d. Signs, signals and lettering may be inscribed or

exposed on any part of a building or in the limited common elements of the project that meets the requirements of the ordinances of the County of Kauai and approved as to standards set by the Board of Directors of the Association from time to time.

e. Each owner will be responsible for the landscaping and upkeep of its own Area and shall not permit its Area to be overgrown with weeds and/or place and/or store used vehicles, equipment, appliance and/or materials to make the Area become unsightly like a junkyard.

Executed at Lihue, Hawaii, this 22 day of March, 1995.

HEDSCH, INC.

  
\_\_\_\_\_  
Hedda Schmutz  
Its President

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## **EXHIBIT "G"**

### **SUMMARY OF DECLARATION OF RESTRICTIVE COVENANTS**

The Declaration of Restrictive Covenants for the subdivision of Lot 129-B in the Kapaa Homesteads, Fourth Series, Kapaa, Kawaihau, Hawaii dated June 25, 1986 was filed in the Bureau of Conveyances, State of Hawaii in Book 19663, Page 157. The reading of the Declaration is important and certain requirements have to be met before any construction and development of any improvements can be undertaken as well as the use of the lot.

1. There are Lots 39 through 44 inclusive, in this subdivision of which Lot 43 is the Project and therefore affected by this Declaration.

2. A dwelling house, excluding a guest cottage, shall have a minimum of 700 square feet of ground floor area not including storage, lanais, porches and a garage either attached to or adjacent to the main dwelling which shall have a minimum of two bedrooms.

3. No quonset, A-Frame or Dome type structure shall be constructed. No structure of a temporary character shall be used on any lot as a residence.

4. The construction shall be of new material and no existing dwelling may be moved onto a lot. Asphalt felt roll roofing and corrugated roofing of any kind is prohibited.

5. No noxious or offensive activity shall be carried on, nor any thing which becomes an annoyance or nuisance, no animals, livestock or poultry shall be kept except that no more than two common household pets may be kept. Pigs, goats, rabbits, ducks, and chickens shall not be deemed to be household pets.

6. The lot(s) shall be free of weeds and other unsightly nuisances, not used as a dumping ground for rubbish and waste, rubbish kept in sanitary containers and kept in a clean and sanitary condition.

7. Direct access to Kawaihau Road from any lot is not permitted and access should be through subdivision roads.

8. The sale or disposition of any lot shall be subject to this Declaration and included in any transfer document.

9. The covenants shall run with the land and enforcement may be by the Declarant, its successors and assigns or any owner by way of injunction and/or damages.

**THE FOREGOING IS A SUMMARY AND IS FOR THE CONVENIENCE OF THE READER AND IF THERE IS ANY QUESTION THE ORIGINAL DOCUMENT SHOULD BE EXAMINED AND SUCH ORIGINAL DOCUMENT CONTROLS OVER THIS SUMMARY.**